LABOUR DEPARTMENT

The 9th September, 1969

No. 5769-A.S.O.(E)-Lab-69/21984.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal Haryana, Faridabad in respect of the dispute between the workmen and the manage ment of M/s Usha Spinning and Weaving Mills, Faridabad

BEFORE SHRI P.N. THUKRAL, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 43 of 1968

between

THE WORKMEN AND THE MANAGEMENT OF M/S USHA SPINNING AND WEAVING MILLS LTD., FARIDABAD

Present.—Shri Satish Loomba, for the workmen.

Shri P.N. Gulati, for the management.

AWARD

M/s Usha Spinning and Weaving Mills Ltd , Faridabad is a public limited company with an investment of Rs 2,44,49,973.22 Paise comprising of share capital of Rs 79,89,595.00. Reserve and surplus Rs 4,87,049.50 Paise. The workmen of this Company demand that the gratuity scheme b. introduced but this demand was not accepted by the management on the ground that the Company is still in its infancy period and has not earned any profit so far. This gave rise to an industrial dispute and the Governor of Haryana in exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute to this Tribunal for adjudication,—*vide* Government Gazette Notification No ID/FD/ 21166, dated 13th August, 1969:—

> Whether gratuity scheme should be introduced in that factory? If so, with what details and from which date?

On receipt of the reference, usual notices were issued to the parties by my learned predecessor Shri K.L. Gosain in response to which a statement of claim was filed on behalf of the workmen and the management filed their written statement. It is pleaded on behalf of the workmen that the respondent company is one of the biggest and well established concerns of Northern India, that it was originally established with a capital of Rs 20 lacs but the policy of the management has consistently been directed towards investing a part of huge profits earned by the Company on the purchase of new machinery and within a short period the Company has added 29 Ring Machines, 60 carding, one blow room, 8 fly frames, 5 Drawing frames, 3 doubling machines, 1 cheese winding machi e, 6 Kon winding and 55 Reeling machines, the total cost of which comes to more than a Crore of Rupees and more than 1,500 persons are employed. It is pleaded that the workmen are deprived of many facilities which are available to other employees of similar concern and their demand for enforcement of gratuity scheme is real and genuine.

On behalf of the management it is pleaded that the respondent Company is only a medium size Textile Mills of 25,000 spindles. It is denied that the company started business with a capital of Rs 20 lacs only. It is pleaded that by 30th June, 1963 the Company had invested Rs 88,96,437.58 Paise comprising of share capital of Rs 34,85,780.00 incurred secured loans Rs 46,33,802 and current liabili ies and provisions of Rs 7,76,855.09. It is denied that the policy of the management has been directed towards investing the profits on the purchase of new machinery. It is submitted that the Company raised another issue of share capital in 1964-65 and raised a loan of Rs. 48 lacs (approximately) from the Industrial Finance Corporation and so the total investment as on 30th June, 1967 was Rs 2,44,49,973.23 Paise comprising of share capital Rs 79,89,595.00 reserve and surplus Rs 4,87,049.59 secured loans Rs 1,36,17,262.72 Paise unsecured loan Rs 7,31,025.00 and current liabilities comprising Rs 16,25,040.92. It is pleaded that the value of the machines as on 30th June, 1967 was Rs 1,13,39,281.24 Paise and the total excess amounted to Rs 1,78,69,334.45. It is submitted that in the balance-sheets the value of assests was calculated according to the straight line method as permitted under the Companies Act and a nominal profit is shown to have been earned but if depreciation is calculated according to the Rules under the Income-tax Act, the Company would suffer a loss and so no dividend has been paid to the share holders. It is denied that the workmen have to put in hard labour or that their wages are low. It is submitted that as a matter of fact the respondent Company is paying much higher wages to their workmen in comparison with the wages which are being paid to the workmen in the neighbouring mills.

The pleadings of the parties gave rise to only one issue which is precisely the same as mentioned in the order of reference. My learned predecessor Shri K.L. Gosain, therefore, directed the parties to produce their evidence in support of their respective submissions. The workmen have produced two witnesses, namely, Shri Prem Singh A.W. 1 who is working as a Reeler in the respondent concern and Shri Satish Loomba, Secretary, All India Trade Union Congress.

Shri Prem Singh has stated that since the time he joined the respondent concern in 1964, the financial position of the respondent is improving. The witness has arrived at this conclusion because according to him the number of workmen have arisen from 700 to 1,400 and the number of machines have gone up from 27 to 56. The witness says that new plants have been added and that gratuity scheme is in force in similar mills in Delhi and Bhiwani. However, the name of the mills and the details of the gratuity scheme which is in force in these mills have not been given.

The second witness who has appeared on behalf of the workmen is Shri Satish Loomba, Secretary, All-India Trade Union Congress. Shri Loomba produced a booklet on gratuity schemes in force in Punjab and stated that he has personal knowledge of the most of gratuity schemes in operation in Punjab whether under settlements or through awards and the booklet produced by him is based upon these awards and settlements. He further says that he negotiated a settlement with Shri Kulwant Rai who controls the respondent concern but Shri Rai has not fulfilled the terms of the settlement regarding gratuity and has even refused to negotiate. According to the witness the respondent concern has made a profit even after meeting the losses in 1962 and and 1963 amounting to Rs. 4,04,457.33.

In rebutal the management have examined Shri R.K. Kinra their accountant who has a different story to tell and have filed copies of their balance-sheets and depreciation schedule for the year 1966-67 which is supposed to have been prepared in accordance with the Income-tax Rules. According to Shri Kinra the respondent concern which started with a share capital of Rs 35 lacs is deeply under debt because it has borrowed capital of Rs 30 lacs from Industrial Finance Corporation, Rs 9 lacs from Banks against working capital and Rs 7 lacs for machinery against deferred payment. The witness says that when this company was started the face value as also the quoted value of the share was Rs 10 per share but the value has gone down to Rs 6 per share and this means that the Company is suffering a loss. As regards the addition of the Plants the witness has explained that previously the respondent Company had twelve thousand spindle units which were uneconomic and in order to have better return 29 Ring machines, 60 carding machines, 1 blow room, 8 fly frames and 5 drawing frames, 3 doubling machines, 1 cheese winding machine, 6 cone winding and 65 reeling machines have been added not out of profit as alleged but they were purchased out of the share capital of Rs 45 lacs and Rs 40 lacs were taken from industrial Finance Corporation as rupee loan and Rs 8 lacs as currency loan at the then exchange rate but after devaluation its value is now 13 lacs. The witness says that the respondent company has raised public deposit of Rs. 7 lacs 31 thousands, as on 30th June, 1967 and the amount borrowed from Banks was Rs. 42 lakhs for working capital and machinery on deferred payments was purchased for Rs 12 lacs. The witness says that the preference share capital is Rs 25 lacs out of which Rs 10 lacs is to be redeemed by 29th October, 1971 and another Rs 15 lacs have to be redeemed by 19th May, 1977 and an application has been made to the Industrial Finance Corporation for reshedding of repayment of loan in order to save the Company from going into liquidation because under the law redeeming of the preferential shares cannot be deferred and the company has to keep the public deposits in tact in order to be able to make the cash payments and therefore, on account of the tight financial position of the respondent Company the Industrial Finance Corporation has accepted the application for postponing the repayment of loan. According to the witness the respondent concern has not been able to make profit because of the constant rise in the price of cotton and yarn and it has suffered a loss of Rs 29,90,000 as on 30th June, 1967 if the depreciation of the Plant and Machinery is calculated in accordance with the Rules framed under the Income-tax Act.

The witness has been cross examined at length by the representative of the workmen in order to show that the figure of rupees twenty-nine lakhs ninety thousand as loss as alleged by the witness is not correct. During cross exmination the witness of his own accord referred to chart Ex. M.W 1/6 in which the depreciation as per Income-tax Rules is supposed to have been calculated but admitted that the calculations as given in the chart were not made by him but he simply checked them and found them to be correct.

I have carefully considered the evidence of the witness with regard to his statement that the respondent company has suffered a loss of Rs 29,90,000 if depreciation is calculated in accordance with the Income-tax Rules and in my opinion his evidence is wholly unsatisfactory. Naturally the evidence of the witness is based upon the Chart Ex. M.W.1/6. As already observed the witness admits that the chart in question was not prepared by him and he simply checked it but has not explained what checking done by him. The answers given by the witness practically to all the questions put to him in cross examination are evasive and highly unsatisfactory. In the chart Ex. M.W. 1/6 depreciation on factory building, staff quarters and labour colony has been calculated at 5 percent. without indicating the type of material used. Under the Income-tax Rules depreciation is allowed at the rate of 2.5 per cent on first class substantial building of selected material and at 5 per cent on second class building of less substantial construction. In order to justify the calculation of depreciation at the rate of 5 per cent it was therefore essential for the respondent to prove that the factory building, staff quarters and labour colony fell in the category of second class building which are of less substantial construction but there is no evidence to prove this fact. Secondly depreciation on electrical equipment, light and fitting have been calculated at the rate of 20 per cent because of the alleged triple shift working but the Income tax Rules do not provide this much depreciation. According to rules 20 per cent depreciation is allowed on batteries; on switches and gears depreciation is allowed at the rate of 7.5 and it is specifically mentioned and there is no extra shift allowance. As regards cables depreciation is allowed at the rate of 5 per cent. Further in the chart depreciation on fire equipment is calculated at 10 per cent although there is no provision in the rules which permit depreciation on this item. However, the main item on which the management have failed to prove that the depreciation has been correctly calculated is the item of plant and machinery. In the chart Ex. M.W. 1/6, the total cost of the plant and machinery has been calculated as Rs 1,39,17,367.63 paise on which total depreciation upto 30th June, 1966 has been calculated as Rs. 37,48,214.44 paise and depreciation for the year 1966-67 has been calculated as Rs 18,60,807.49 paise. These calculations have been made on the assumption that the plant and machinery have worked triple shift throughout since this time the factory started production. Under the Income-tax Rules depreciation is allowed on textile plant and machinery only at 10 per cent. The rules provide that extra allowance upto a maximum of 50 per cent of normal allowance can be allowed by the Income-tax Officer where the concern claims such allowance on account of double shift working and satisfies the Income-tax Officer that the concern has actually worked double shift. The rules further permit an extra allowance upto maximum of 100 per cent of the normal allowance instead of 50 per cent in computing the total income assessable for any assessment year commencing on or after the first day of April, 1964 where the concern proves that it has worked triple shift. The rules lay down that the calculations of the extra allowance for double shift working and for triple shift working shall be made separately in the proportion which the number of days for which the concern working double shift or triple shift as the case may be bears to be normal number of working days throughtout the previous year. Thus we see that the Income-tax rules are very strigent and concern can be allowed an extra allowance upto 50 or 100 per cent of the normal depreciation only if if the Income-tax Officer is satisfied that the concern has actually worked double shift or triple shift for the period for which extra depreciation is claimed. In the present case as already pointed out depreciation has been calcual

lated at 20 percent on the assumption that the concern have worked triple shift but no evidence had been produced to prove this fact. The representative of the workmen wanted the witness to state how he had checked up the depreciation on the plant and machinery and instead of giving a straight forward answer as to how the witness had satisfied himself that the factory had worSed triple shift throughout the period of its working the witness gave a very evasive reply and stated that he had checked up according to rules as provided in the Income Tax Act. This reply is neither here nor there. The witness did not credit to himself by answering in the manner he has done. It appears that the witness tried to be over clever and his pet reply to a number of questions put to him was that the calculations had been made as per Income Tax Rules.

In order to expose the hollow nature of the answers which were being given by the witness the question put to him and the answers given were recorded verbatim. The Income Tax rules with regard to the depreciation admissible on buildings, electrical equipment and plan and machinery have been indicated above. We have seen that the rate of depreciation admissible on the buildings depends upon the type of building and if 20 per cent depreciation is to be claimed on plant and machinery then the concern has to satisfy the Income Tax Officer that the plant has actually worked triple shift throughout the period for which the 20 per cent depreciation is claimed. In case the management had produced a copy of the return made to the Income Tax Department and a copy of the assessment order, then it would have been an end of the matter but the management have not done so. The learned representative of the management pointed out that the income Tax return and the assessment order are privebaged documents and the management could not be compelled to produce them. This submission is correct but if the management wanted to satisfy the conscience of this Court they could filed these documents and at the same time claim privelege under Section 21 of the Industrial Disputes Act but this has not been done. In short the position is that the management have not placed and material on the record to enable this Tribunal to come to the correct conclusion as to the amount of depreciation which should be calculated on the plant and machinary and the other items under the Income -tax Rules.

The perusal of the file shows that the workmen in para No. 5 of the statement of claim have made avague sort of an allegation that the mill functions 24 hours in three shift which changes after every fortnight and the workmen are not allowed even ½ hour rest during the period of their work. It is, however, not possible to hold on the basis of this vague assertion that the mill has actually been working 24 hours throughout because this assertion is proved to incorrect even from the record of the management. The sixth annual report relating to the year 1966-67 marked Ex. M 5 under the heading "Labour" shows that the workers went on strike which lasted from 13th October to 4th November, 1966 off-setting the gains achieved by the mill in the previous months. The plant and machinery could not have been working even one shift during the period of the strike but we find that in the chart Ex. M.W. 1/6, the period of the strike has not been excluded. On the other hand depreciation at 20 per cent has been charged on the assumption that the plant and machinery worked triple shift throughout. Further we find that the Income Tax Rules have been contravened. As already pointed out the Income Tax rules lay down that extra allowance upto a maximum of 100 per cent of normal allowance can be allowed in computing the total income assessable for any assessment year commencing on or after first day of April, 1964 where the concern proves that it has actually worked triple shift. It is an admitted fact that the respondent concern started production in March, 1963 and extra allowance of 100 per cent of the normal allowance has been claimed from the very beginning and not from 1st April, 1964 onwards as provided in the rules. This shows that the chart-Exhibit .MW. 1/6 has been prepared very carelessly. As regards the period after 1st April, 1964. I am of the opinion that the vague type of admission made by the workmen in the statement of claim cannot be of any help to the management because the workmen have not stated that the factory has worked triple shift without any interruption while under the rules it was incumbent upon the management to prove that the factory has worked triple shift continously without any break. The management have not produced any evidence to prove this fact.

The learned representative of the management wanted that a presumption of correctness should be attached to the chart Exhibit M.W. 1/6 on the principles underlying the provision of section 23 of the Payment of Bonus Act because the chart Exhibit M.W. 1/6 has also been prepared by duly qualified chartered accountant. Under Section 23 of the Payment of Bonus Act there is a presumption about the accuracy of balance sheets and profit and loss accounts if they are audited by auditors duly qualified to an act auditors of the Company under sub section (1) of Section 226 of the Companies Act, 1956 (1 of 1956). I am afraid it is not possible to accept this contention either. It is not possible to set at naught the stringent provisions of the Income Tax rules which require that the assessee must prove to the satisfaction of the Income Tax Officer that the concern had actually worked double shift or triple shift claimed. Shri Kinra who has given his evidence after referring to the Chart Exhibit M.W. 1/6 is whole time employee of the respondent concern and it should not have been difficult for him to tell the Court whether the factory building staff quarters and labour colony was of first class material or second class material. Further the witness could have brought with him all the relevant records to show that the factory had actually worked triple shift throughout the period.

According to the representative of the workmen the management have over charged depreciation to the tune of Rs. 16,65,836.82 paise and therefore, even after meeting the arrears of deperciation the net profit which the respondent company has earned would come to Rs. 8,19,688.10 paise. It is submitted even if the depreciation is calculated on the basis that the factory has worked double shift still the company would show profit. In my opinion it is not possible to accept this submission of the learned representative. Calculation of depreciation on mere presumptions or suppositions is not possible, and therefore on the basis of the evidence on the record it is not possible to say definitely whether the respondent concern has or has not earned any profit if depreciation is calculated according to rules laid down under the Income Tax Act.

However, the question whether the respondent company has or has not earned profit if depreciation is calculated in accordance with the provision of the Income Tax Rules is not very material for the purpose of deciding as to whether the gratuity scheme should or should not be introcuced. The main ground on which the introduction of the gratuity scheme is opposed by the learned representative of the management is that the respondent concern is still in its infancy and is not yet strong enough to bear any additional financial burden and the introduction of the gratuity scheme should, therefore, await till the concern is able to stand on sound financial footings. There is no force in this contention. The learned representative of the workmen has rightly submitted that before introducing the scheme for gratuity the Tribunal must take a long range view of the matter because no immediate financial burden is put on the company when the gratuity scheme is brought into force.

The introduction of the gratuity scheme does not place any immediate financil burden on the respondent company therefore practically there is no difference if the depreciation is calculated according to the straight line method or under the Income Tax Rules because in the long run the depreciation would be the same. The respondent company is undoubtedly quite a big concern. It was started with a capital investment of Rs. 88.96 lacs and by 1967 the total investment has gone upto 2.44 crores. It is in the evidence of the management that plant and machinery was added to make the concern economically more sound so there is no denying the fact that the respondent concern has a bright future.

Before introducing any gratuity scheme for the payment of gratuity it must also be seen whether it would promote industrial peace and result in all round efficiency and secondly whether the industry would be able to bear additional financial burden which would necessarily be imposed upon it. So far as the desirability of introducing the gratuity scheme in a concern like the present one in which a large number of persons are employed and which has a wage bill of Rs 25,93,766.05 per annum, there can be no two opinion about it. I can do no better than quote the observations of their Lordship of the Supreme Court made in the case of Burhanpur Tapti Mills Ltd. Vs. Bhurhanpur Tapti Mills Mazdoor Sangh reported in 1965-I-LLJ-453 the observations are as under :—

> "A scheme of gratuity and a scheme of pensions have much in common. Gratuity is a lump-sum payment while pension is a periodic payment of a stated sum. They are both efficiency devices and are considered necessary for an orderly and humane elimination from industry of supra-annuated or disable employees who but for such retiring benefits would continue in employment even though they function in-efficiently. The voluntary retirement of an in-efficient or old or worn out employee on the assurance that he would get a retiral benefit leads to the avoidance of industrial disputes, promotes contentment among those who look for promotions, draws better kind of employees and improves the tone and moral of the industry. It is beneficial all round. It compensates the employee who as he grows old knows that some compensation for the gradual destruction of his wage-earning capacity is being built up. By inducing voluntary retirement of old and worn out workmen it confers on the employer a benefit akin to the replacing of old and worn out machinery. An indirect saving also results when workmen at the top of the wage-scale retire and their place is taken by more energetic workmen at lower scales. Compensation for retrenchment is solatium for premature termination of employment. Contribution to the provident fund is designed to induce thrift so that the employee may lay by from his present earning a portion for a rainy day or for his old age. As the workmen cannot be expected to spare very much, regard being had to the gap between what he earns and what he must spend the employer is expected to make a contribution. Gratuity is a retiral benefit of a very different kind because it is earned by giving service. The existence of any one of the three schemes, therefore, does not obviously overlap any other two. They can all exist together provided the financial position justifies such a course."

As regards the question whether the respondent concern can bear the additional financial burden which would be imposed upon it by the introduction of the gratuity scheme there is no doubt about it and the position is quite clear. The concern was started in the year 1963 and the annual reports issued by the management and marked Ex. M. W.I 1 to Ex. M. W.I 5 show that in the short span of its six years of working it has been showing profits. It is true that in the balance sheets depreciation has been calculated according to the straight line method which is permitted under the Companies Act but the representatives of both the parties agree that in the long run there is no difference whether the depreciation is calculated according to the straight line method or it is calculated according to the rules made under the Income Tax Act. According to the straight line method the depreciation continues to be calculated on the original cost and it remains the same throughout Under the Income Tax Rules the depreciation is higher in the beginning but as the time passes on the depreciation decreases because the depreciation is calculated on the written down value. So we see that in the long run it does not make any difference whether the depreciation is calculated according to the straight line method or according to the rules under the Income Tax Act because the introduction of gratuity scheme does not impose any immediate financial burden. As already pointed out the gratuity scheme is only a "retiral benefit" and not more than 3 or 4 per cent employees are expected to retire from service in a year. In this connection also the observation of their Lordship of the Supreme Court in the case of Burhanpur Tapti Mills Ltd. vs. Burhanpur Tapti Mills Mazdoor Sangh already cited above are very enlightening. It has been observed as under :—

> "A scheme for gratuity no doubt imposes a burden on the finances of the concern but the pressure is effectively distributed over the retirements each year. The employer is not required to provide the whole amount at once. He may create a fund, if he likes and pay from the interest which accrues on a capitalized sum determined actuarially. That is one way of providing the money. Ordinarily the payment is made each year to those who retire. To judge whether the financial position would bear the strain, the average number of retirements per year must be found out. That is one part of the inquiry. The next part of the inquiry is to see whether the employer can be expected to bear the burden from year to year. The present condition of his finances, the past history and the future prospects all enter into the appraisal of his ability."

Examining the financial position of the respondent company in the light of the observation made above be found that the past performance of the respondent Company has been throughout commendable. The present condition of its finances is also quite satisfactory because the balance sheets show profit. There is practically no reason to suspect that the future prospects are dim. It is no doubt true that a quite big loan has been taken from the Industrial Finance Corporation and from the public in the form of deposits and preference shares etc. but all the amount has been invested in the purchase of machinery and other profitable items. As Shri Kinra has explained that all this investment has been made in order to have better returns because previously the factory was uneconomic so all the debts raised by the Company instead of putting any financial burden on it would improve its economic prospects. There is no reason to believe that there is any inherent defect in the working of the respondent concern. Shri Kinra has himself explained that the reason why it has not been possible to make profit so far is the constant rise in the price of cotton without any proportionate increase in the price of the yarn. This difficulty is not peculiar to the respondent Company. All the spinning mills must be facing this problem. If the price of the cotton does not fall in near future the price of yarn is bound to rise in due course of time and the respondent Company with it

efficient working is bound to make substantial profit. Considering thelarge labour force employed by the respondent Company, installation of upto date machinery and the huge assets, the introduction of gratuity scheme would in my opinion do immence good to it.

In my opinion the gratuity scheme should be introduced in the respondent with effect from the date of the order of reference with the following details :—

Serial No.	Reason for termination	Gratuity Payable
1.	Termination of services of the workmen by the management for any cause except :—	One month's consolidated wages for each year of service subject to a maximum of Rs 3,000.
	(i) theft, fraud or dishonesty in connection with the employerss business or property	
	(ii) wilful damage to or loss of employers goods or property.	
	(iii) riotous or violent behaviour in the premises of the establishment of his employer.	
2.	In the case of physical or mental disability or death ..	One month's consolidated wages for each year of service subject to a maximum of Rs. 3,000 with a minimum of Rs. 500/-
3.	Resignation by the workmen provided he has completed a minimum of 10 years of service. ..	15 days consolidated wages for each year of service.
4.	Termination of service by reason of retrenchment ..	15 days consolidated wages for each year of service in addition to any retrenchment compensation admissible under the law.

Note.—Service for six months or more in any year will be deemed to be service for a year for the purpose of computation of gratuity.

Dated the 20th August, 1969

P. N. THUKRAL,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 3326, dated 22nd August, 1969.

Forwarded (four copies) to the Secretary to Government Haryana, Labour, & Employment Departments. Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

P. N. THUKRAL,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

H. S. ACHREJA, Secy.

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